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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MARCO AGUIRRE,

Plaintiff and Appellant,

v.

MARY BETH MADY,

Defendant and Respondent.

G055718

(Super. Ct. No. 30-2016-00842690)

O P I N I O N

Appeal from the judgment and postjudgment orders of the Superior Court of Orange County, David R. Chaffee, Judge. Affirmed.

Chambers & Noronha, Gary Lee Chambers, Chantell Cervantes-Chambers and Garrett R. Chambers for Plaintiff and Appellant.

Michael Maguire & Associates, Paul Kevin Wood and Kathryn Saldana; Gates, O'Doherty, Gonter & Guy and Alan P. Trafton for Defendant and Respondent.

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Marco Aguirre sued Mary Beth Mady for personal injuries he purportedly sustained when Mady rear-ended his vehicle in a low-speed crash. Mady admitted her negligence caused the accident, but argued it did not cause Aguirre's claimed harm. The jury determined Aguirre's injuries were not caused by the accident. Aguirre contends the judgment should be reversed and a new trial ordered because substantial evidence demonstrated the accident caused Aguirre's injuries and he was thus entitled to damages. Finding no error, we affirm the judgment and the postjudgment orders.

I

FACTS

In September 2015, Aguirre was stopped at a red light while driving his Chevy S-10 pickup truck. Mady's Ford Focus rear-ended Aguirre's stopped vehicle at a low speed. Air bags did not deploy and neither vehicle was repaired.

Aguirre testified the impact "felt like an explosion" and that it pushed his vehicle three to five feet forward. Aguirre stated the impact occurred at the lower right side of his back bumper. Mady described the impact as "light" and stated she struck Aguirre's vehicle straight on.

After the collision, Aguirre stated he felt pain in his head, shoulders, neck, and back. He did not seek medical treatment that day. Aguirre first sought medical treatment after an attorney referred him to a chiropractor, Dr. Darren Stewart, who performed orthopedic tests and developed a treatment plan.

In March 2016, about six months after the collision, Aguirre filed a complaint against Mady. Aguirre alleged motor vehicle property damage, personal injury, and general negligence.

Approximately 14 months after the accident, and nearly 11 months since his last medical treatment, Aguirre saw Dr. David Petersen, an orthopedic surgeon. Dr. Petersen diagnosed Aguirre with sacroiliac joint dysfunction, performed a diagnostic injection, and recommended a fusion surgery to the sacroiliac joint. At trial, Mady

questioned Aguirre about his responses to Dr. Petersen's initial medical history questionnaire. The questionnaire asked for "previous injuries," which Aguirre left blank. It also asked: "prior to this injury, have you ever experienced similar pain?" Mady questioned Aguirre about his response: "[Q] And you left that blank as well, right? [¶] [A] Yes." In fact, Aguirre was involved in three prior vehicle accidents. One accident occurred in 2011, where he suffered "similar" injuries to his back and neck. Just over a month before the accident at issue, Aguirre went to a medical clinic with complaints of "neck, shoulder, back discomfort pain."

After treating Aguirre three times and reviewing his records, Dr. Petersen testified the collision caused injuries to Aguirre, specifically to his sacroiliac joint. He further stated Aguirre had degeneration at the time of the collision which was aggravated by the impact of the accident. Dr. Petersen's opinion was based, at least in part, on the fact that Aguirre reported never having pain and discomfort in the same areas prior to the accident.

Mady's orthopedic expert, Dr. Steven Nagelberg, examined Aguirre and reviewed his records. At trial, Dr. Nagelberg stated Aguirre's behavior was "very peculiar" during the examination when he was lightly touched: "He had pain in his neck just when I touched the skin. I'm not talking about pushing on the skin, just touching the skin, which is a very unusual complaint that would not typically be seen with somebody related to injury. That might be considered with somebody with psychological conditions, malingering. But simply touching the skin should not be painful." Dr. Nagelberg opined that, assuming Aguirre was truthful concerning his complaints of injury, he sustained soft tissue injuries to his neck and low back in the accident, which consisted of pain, restricted motion, and tenderness. He further found no basis for a diagnosis of sacroiliac joint dysfunction and found the diagnostic injection performed by Dr. Petersen unnecessary. Finally, Dr. Nagelberg opined Aguirre would be "the world's worst candidate for surgery." Mady's radiological expert, Dr. Stephen Rothman, testified

while Aguirre's MRIs reflected some degenerative indications, none showed any injury caused by trauma.

Aguirre's expert in accident reconstruction and biomechanical engineering, Jai Singh, testified Mady's vehicle was traveling between 11 and a half to 14 and a half miles per hour at the time of impact. He further opined Aguirre was an "out-of-position" occupant because he was twisted to look at traffic at the time of impact, which supported Aguirre's claimed injuries. Singh based his conclusion that Aguirre was "slightly twisted" at the time of the accident based on a single note in Dr. Petersen's records made at least 14 months after the accident. Singh acknowledged no earlier medical records indicated Aguirre was twisted at the time of the accident. Singh never spoke with Aguirre about his position at the time of impact, even though the extent to which Aguirre was twisted impacted his biomechanical engineering conclusions. Singh did not confirm the position of Aguirre's seat at the time of the collision, assuming it was close to "back position." Singh never inspected either of the vehicles involved in the accident and did not request to inspect Aguirre's vehicle. Finally, Singh confirmed the force from the accident was not sufficient to create a structural failure of any spinal discs.

Accident reconstruction and biomechanical engineering expert, Bryan Randles, testified for Mady. Randles personally inspected Mady's vehicle and relied on the traffic collision report; depositions of Aguirre, Mady, Singh, and Drs. Petersen, Chirag Narayan Amin, and Stewart; discovery responses; Aguirre's medical records; color photographs of both vehicles; and repair estimates for each vehicle. Randles concluded the speed of the accident was about two and a half to four and a half miles per hour. He compared that speed to bumper cars, stating bumper car impact ranges from "about 4 to 5 miles an hour" and as high as "8.6 miles per hour." He opined the impact involved in the accident "would essentially be like being rear-ended in a bumper car." Randles further reviewed a database of 650 published tests of human subjects in rear-end accidents at the same speed as the underlying crash. Less than one percent of the subjects

experienced symptoms that persisted more than 14 days. Randles noted Singh based his expert opinion on a single test from a 2005 Ford Focus that utilized problematic calculations. He further noted Aguirre did not indicate he was turned or twisted at the time of the accident, even though he was asked about his positioning by Dr. Stewart the day after the accident. He stated the impact of the accident would not cause either a disc herniation or bulge.

During trial, the court stated on the record, but outside the presence of the jury, the following regarding choosing not to use an in-network physician for injuries sustained by a third party: “That strikes me as a form of fraud. That’s a serious concern to the court right now. If you have insurance, your first obligation, in my opinion, as a matter of law is to use the insurance” Further, the court stated, “But the lien amount . . . is simply a *Howell* avoidance mechanism, which is improper. It’s fraud. [¶] And so I am not going to allow that kind of fraud to be placed in front of the trier of fact in this case.” The court ultimately determined the exact amount of the unpaid medical liens could not come into evidence, nor could the bills themselves. Indeed, after a hearing on the issue, the court determined Dr. Petersen was not qualified to discuss medical expenses, not even his own. Instead, the court ruled Mady could put on evidence that Aguirre’s medical expenses were liened and that Aguirre had medical insurance.

After the defense rested, Aguirre made an oral motion for directed verdict on the issue of causation. The trial court denied the motion. The jury unanimously determined Aguirre’s claimed injuries were not caused by the accident. The jury was provided a special verdict form which asked “Was [Mady’s] negligence a substantial factor in causing harm to [Aguirre],” to which the jury marked “[n]o.”

Aguirre filed a series of posttrial motions, including a motion for judgment notwithstanding the verdict (JNOV), motion for new trial, and motion to strike and/or tax costs. All of Aguirre’s posttrial motions were denied. Aguirre appeals from the court’s judgment and the denial of the motions for JNOV and new trial.

I

DISCUSSION

Aguirre argues the jury's finding of no causation was not supported by substantial evidence. He further contends the trial court's failure to admit damages evidence constituted reversible error and the court's statements on damages prevented a fair trial. The jury concluded the accident did not cause Aguirre to require medical treatment. Because the jury found against Aguirre on the issue of causation, it did not consider the issue of damages. We determine substantial evidence supported the jury's verdict and affirm the judgment and postjudgment orders.

When reviewing a challenged jury verdict, the role of the appellate court is not to weigh the evidence, but rather to determine whether any substantial evidence supported the jury verdict. (*Begnal v. Canfield & Associates, Inc.* (2000) 78 Cal.App.4th 66, 72.) On appeal from the denial of a JNOV motion, we review the record de novo to determine whether there was substantial evidence to support the verdict and whether the moving party was entitled to judgment in its favor as a matter of law. (*Linear Technology Corp. v. Tokyo Electron, Ltd.* (2011) 200 Cal.App.4th 1527, 1532.) “The scope of appellate review of a trial court’s denial of a motion for [JNOV] is to determine whether there is any substantial evidence, contradicted or uncontradicted, supporting the jury’s conclusion and where so found, to uphold the trial court’s denial of the motion.” (*Pusateri v. E. F. Hutton & Co.* (1986) 180 Cal.App.3d 247, 250.) Similarly, in reviewing the denial of a motion for new trial on the basis of insufficient evidence, “our power *begins* and *ends* with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the jury.” (*Charles D. Warner & Sons, Inc. v. Seilon, Inc.* (1974) 37 Cal.App.3d 612, 617.) Applying the substantial evidence rule, we resolve “all conflicts in the evidence and all legitimate and reasonable inferences that may arise therefrom in favor of the

jury's findings and the verdict.” (*Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1137-1138.)

Aguirre contends Mady's experts conceded the injury existed. Contrary to Aguirre's assertion, however, Mady's experts thoroughly explained why the low-speed crash did not, and indeed could not, cause Aguirre's claimed injuries. Randles opined the collision was at such a low speed it was akin to being bumped in a bumper car. He also discredited Singh's methodology and failure to examine the vehicles or interview Aguirre. Dr. Nagelberg similarly raised doubts about the genuineness of Aguirre's injury, calling him “the world's worst candidate for surgery,” and also questioned Dr. Rothman's conclusions. Simply put, while Mady conceded liability for the low-speed crash, she did not concede causation for Aguirre's myriad injuries.

Because Mady did not concede Aguirre's injury, Aguirre bore the burden of proving his medical treatment was “reasonably necessary.” (*McAllister v. George* (1977) 73 Cal.App.3d 258, 264.) Furthermore, the reasonable value of Aguirre's proposed surgery and past treatment only became relevant once the jury determined the accident caused him to require such reasonably necessary treatment. There was ample evidence showing the accident did not cause Aguirre's injuries. Photographs of the parties' vehicles showed little to no damage from the collision, consistent with Randles's testimony that the crash was akin to being bumped in a bumper car. Aguirre was also involved in three prior accidents. He visited a clinic 39 days prior to the accident and complained of similar neck, shoulder, and back pain. Aguirre also went nearly 11 months between medical treatments after the collision. So while Mady's negligence caused the accident, substantial evidence supported the jury's determination that it was not a substantial factor in causing Aguirre's claimed injuries. The trial court did not err in denying the motions for JNOV or new trial.

Aguirre further contends the trial court erred by failing to admit evidence as to the amount of damages. Because substantial evidence supported the jury

determination that Mady's negligence was not a substantial factor in causing Aguirre's harm, we need not address Aguirre's claims of evidentiary error because the jury never reached the issue of damages.

Finally, for the first time on appeal, Aguirre argues the trial court's statements concerning fraud demonstrated bias against Aguirre and deprived him of a fair trial. A party claiming bias must show that judicial misconduct of such import that it deprived the party of "a fair as opposed to perfect trial." (*People v. Snow* (2003) 30 Cal. 4th 43, 78.)

Aguirre makes no cogent argument as to how the court's comments, made outside the presence of the jury, affected the verdict. The claims of bias concerning the issue of damages had no bearing upon whether Aguirre met his burden of proof as to causation. Because there was no nexus between the comments of the court and the jury's finding of no causation, we find no error.

III

DISPOSITION

The judgment and postjudgment orders are affirmed. Mady shall recover her costs on appeal.

MOORE, ACTING P. J.

WE CONCUR:

IKOLA, J.

GOETHALS, J.